

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRUCE LEWIS,

Plaintiff,

-against-

WESTCHESTER COUNTY *et al.*,

Defendants.

USDC SDNY
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No. 18-cv-04086 (NSR)

ORDER & OPINION

NELSON S. ROMÁN, United States District Judge:

Plaintiff Bruce Lewis (“Plaintiff” or “Lewis”), proceeding *pro se*, commenced this action on May 21, 2018 pursuant to 42 U.S.C. § 1983 against Defendants Westchester County Jail (“WCJ”), Aramark Correctional Services, LLC (“Aramark”), Correct Care Solutions, LLC (“CCS”), Global Tel-Link d.b.a. Advancepay Service (“Global”), and Captain Abrams. Plaintiff asserts claims as a pretrial detainee sounding in alleged 1) inadequate nutrition (food) in violation of the Eighth and Fourteenth Amendments; 2) inadequate law library and insufficient time to review trial materials in violation of the Sixth Amendment; and 3) interference with religious freedom claims in violation of his First Amendment rights. On October 11, 2021, Defendants filed a Suggestion of Death pursuant to Rule 25(a)(1) that included a screenshot from the Federal Bureau of Prisons database that listed Lewis as deceased as of July 23, 2021. (ECF No. 53.) The Suggestion of Death was served on Plaintiff on October 12, 2021. (ECF No. 54.)

Rule 25(a)(1) provides, in pertinent part, that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Rule 25 establishes a ninety-day period for any party to make a motion to substitute a party for the decedent. *See Kaplan v. Lehrer*, 173 F. App'x 934, 935 (2d Cir.2006). The ninety-day period can be extended where there is “an inability or a significant difficulty in identifying the decedent’s legal representative or successor. *See Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 470 (2d Cir.1998).

In light of the foregoing, Defendants are directed to serve a copy of this Opinion and Order upon Plaintiff’s next of kin, and to file proof of service on the docket. Plaintiff’s next of kin shall have ninety days from service of this Opinion and Order to move to be substituted as the representative of Plaintiff for the purpose of prosecuting Plaintiff’s claims. In the event there is no timely substitution, the Complaint shall be deemed dismissed upon Defendants submitting an affidavit informing the Court that no substitution has been requested and upon submission of a proposed order of dismissal.

Dated: October 21, 2021
White Plains, New York

SO ORDERED:

A handwritten signature in dark ink, appearing to read 'Nelson S. Román', is written over a horizontal line.

NELSON S. ROMÁN
United States District Judge